

TITLE 83: PUBLIC UTILITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER b: PROVISIONS APPLICABLE TO MORE THAN
ONE KIND OF UTILITY

PART 265
PROTECTION OF UNDERGROUND UTILITY FACILITIES

SUBPART A: GENERAL

Section	
265.10	Definitions
265.20	Application of Rules
265.30	Location of Records
265.40	Non-Emergency Excavation and Demolition
265.50	Emergency Excavation and Demolition
265.60	State-Wide One-Call Notice System

SUBPART B: REPORTING OF VIOLATIONS INVOLVING THE ACT

265.100	Reporting of Suspected Violations
---------	-----------------------------------

SUBPART C: REVIEW OF REPORTED VIOLATIONS

265.200	Initial Consideration by Staff
265.210	Issuance of Notice of Violation
265.220	Contents of Notice of Violation
265.230	Alleged Violator's Options After Receiving Notice of Violation

SUBPART D: ADVISORY COMMITTEE

265.300	Advisory Committee: Formation and Duties
265.310	Alleged Violator's Options After Advisory Committee's Decision

SUBPART E: SUBSEQUENT PROCEEDINGS

265.400	Formal Adjudicatory Proceedings
265.410	<u>Scheduling and Time Limits</u>

AUTHORITY: Implementing Section 8-505 and authorized by Section 10-101 of the Public Utilities Act [220 ILCS 5/8-505 and 10-101], ~~and implementing and authorized by~~ Section 3 of the Illinois Gas Pipeline Safety Act [220 ILCS 20/3], ~~and implementing and~~ ~~authorized by~~ Section 11 of the Illinois Underground Utility Facilities Damage Prevention Act [220 ILCS 50/11].

SOURCE: Effective January 16, 1962; codified at 8 Ill. Reg. 18462; amended at 10 Ill. Reg. 19407, effective November 15, 1986; Part repealed at ___ Ill. Reg. _____,

effective _____, new Part adopted at ___ Ill. Reg. _____, effective _____.

Section 265.10 Definitions

In this Part, the following words shall have the definitions shown:

"Act" means the Illinois Underground Utility Facilities Damage Prevention Act [220 ILCS 50/44].

"Approximate location" means the same as in Section 2.8 of the Act [220 ILCS 50/2.8]

"Clear evidence" includes but is not limited to the visual evidence of an unmarked utility facility, such as the presence of an overhead-underground transition or downfeed, or knowledge of the presence of a utility facility, ~~or faded marks from previous marking of a utility facility.~~

"Commission" means the Illinois Commerce Commission.

"Damage" means the same as in Section 2.5 of the Act [220 ILCS 50/2.5]

"Demolition" means the same as in Section 2.4 of the Act [220 ILCS 50/2.4].

"Emergency" means any condition constituting an imminent danger to life, health, or property, or a utility service outage, and that requires immediate repair or action. An emergency also includes the reinstallation of traffic control devices.

"Excavation" means the same as in Section 2.3 of the Act [220 ILCS 50/2.3].

"Excavator" means any person who performs excavation

"Hand digging ~~excavation~~" means the use of hand-operated tools such as shovels, spades, picks, bars, etc., or automatically-powered hand devices designed to be held in the hand of the operator when in use.

"Immediate safety hazard" means any condition constituting an imminent danger to life or health

"Interfere" means the performance of excavation or demolition activities at a location or manner that may result in damage to underground utility facilities~~existence of underground facilities at such a location that their~~

~~presence will be a hindrance or obstacle to any excavation or demolition in that location.~~

"Notice area" means the location(s) where excavation or demolition activities are to occur.

"Operator" means any person who owns, furnishes or transports materials or services by means of a utility facility.

"Person" means the same as in Section 2.1 of the Act [220 ILCS 50/2.2].

"Support" means the installation of shoring, braces, props, or other equipment or material to prevent the displacement of existing underground facilities both during and after the construction or excavation activities of the person utility doing the work.

"Tolerance zone" means the approximate location of underground utility facilities defined as a strip of land at least 3 feet wide, but not wider than the width of the underground facility plus 1-1/2 feet on either side of such facility based upon the markings made by the owner or operator of the facility.

"Underground utility facilities" or "facilities" means the same as in Section 2.2 of the Act [220 ILCS 50/2.2].

"Vacuum excavation" means excavation through the use of high pressure air or water where the excavated material is removed with a vacuum.

Section 265.20 Application of Rules

This Part shall apply to any person and any owner or operator of underground utility facilities. Except for the provisions in Section 265.100, this Part is not applicable to persons when performing excavation or demolition within the boundaries of a municipality of at least one million persons that operates its own underground facility notice system.

Nothing in this Part shall be construed to prevent the incorporation, by reference, of the provisions of the Illinois Highway Code [605 ILCS 5], or 92 Ill. Adm. Code 530 ("Accommodation of Utilities on Right-of-way"), where applicable.

Section 265.30 Location Records

- a) Every underground utility facilities operator shall maintain records showing the location of all of its underground utility facilities, installed after the effective date of this Part, except relatively minor facilities that connect a

particular premises or building to a facility serving more than one premises or building.

- b) Every underground utility facilities operator shall be able to locate all of its underground utility facilities installed after January 16, 1962:
 - 1) by maintaining accurate records showing the location of its underground utility facilities or,
 - 2) by maintaining equipment that ~~which~~ can locate its underground utility facilities in the field.
- c) Nothing in this Part shall be construed to require a utility to maintain records showing the depth of underground utility facilities or to indicate the depth of underground utility facilities in the field.

Section 265.40 Non-Emergency ~~Emergencies~~ Excavation and Demolition

Every person in connection with any non-emergency excavation or demolition or any operation that might interfere with existing underground utility facilities shall:

- a) Provide notice not more than 14 days nor less than 48 hours (exclusive of Saturdays, Sundays and holidays ~~Holidays~~) in advance of the start of any excavation or demolition ~~the work~~ to the State-Wide One-Call Notice System to request that any underground facilities in the notice area be marked in accordance with the Act;
- b) Before commencing excavation or demolition, each person shall take reasonable action to identify the location of underground utility facilities in and near the construction area. Reasonable actions include the performance of a site inspection prior to excavation to verify the person is at the correct location of excavation or demolition activities and ~~to the best of one's ability,~~ check for any indication of unmarked utility facilities. If clear evidence of unmarked utility facilities exists, each person shall comply with the requirements of Section 11(i) of the Act [220 ILCS 50/11(i)]. The additional call to the State-Wide Lawn-Call Notice System shall not be considered a violation of Section 11(d) of the Act.
- e) ~~Identify on appropriate construction plans, with such warnings as may be reasonable, the existence of underground utility facilities determined to be in and near the construction area;~~
- d) Plan the excavation or demolition to avoid or minimize the possibility of damage to underground utility facilities within the tolerance zone by utilizing ~~such~~ precautions that include, but are not limited to, hand excavation, vacuum excavation, and visually inspecting the excavation while in pro-

gress until clear of the existing marked facilities. This is not intended to require that both hand excavation and vacuum excavation be used. Nothing in this Section prohibits the use of any method of excavation if conducted in a manner that would avoid interference with underground utility facilities.

- e) Provide ~~such~~ support for existing underground utility facilities in and near the construction area as may be reasonably necessary for the protection of those such facilities, unless otherwise agreed to by the owner or operator of the underground utility facility; and
- f) Backfill all excavations in such manner and with such materials as to provide reliable support for existing underground utility facilities in and near the construction area.

Section 265.50 Emergency Excavation and Demolition

Every person in connection with emergency excavation or demolition, or when any other emergency operation might interfere with existing underground facilities, shall:

- a) Notify, through the State-Wide One-Call Notice System, as promptly as possible the underground utility facilities operators known to have underground utility facilities in and near the excavation or demolition area;
- b) Unless an immediate safety hazard exists, wait two hours after providing notice to the State-Wide One-Call Notice System before beginning excavation or demolition;
- c) If an immediate safety hazard exists such that a two-hour wait is not possible;
 - 1) Assume the responsibility for demonstrating that site conditions warranted the earlier start time;
 - 2) Conduct a thorough site assessment to determine the location of underground utility facilities;
 - 3) Locate the underground utility facilities with acceptable equipment, if possible;
 - 4) Use hand or vacuum excavation around any known or suspected underground utility facilities;
 - 5) Immediately and ~~D~~irectly notify the utility line operators, if necessary.

- d) Take all reasonable precautions to avoid or minimize interference between the emergency work and existing underground utility facilities in and near the excavation or demolition area.

Section 265.60 State-Wide One-Call Notice System

The utilities, in a joint endeavor, shall continue the operation and maintenance of the previously established State-Wide One-Call Notice System (System) for the exchanging of information between excavators and utilities so that the utilities will know where and when excavation is to take place and the excavators will know where the underground facilities are located, all in accordance with the following criteria:

- a) The System shall continue to be designed, organized, financed, operated, maintained and controlled by the underground utility facility owners and others subject to the jurisdiction of this Part as a joint endeavor;
- b) The System shall provide for a minimum notice period not to exceed 48 hours (excluding Saturdays, Sundays and holidays) in order to assure that the marking of the location of underground utility facilities will occur prior to excavation;
- c) The System shall provide a readily accessible, free of charge, One-Call Notice System whereby any person desiring to excavate shall ~~may~~ give notice to owners of all underground utility facilities located in the area of the proposed excavation;
- d) The System shall provide procedures for verifying that notice was received from the excavator and acknowledged by any owners of the underground utility facilities located in the area of excavation;
- e) The System shall provide publicity of the One-Call Notice System to assure substantially all excavators are informed of the notice procedure;
- f) The System shall provide for participation by utilities not subject to the jurisdiction of the Commission;
- g) The System shall provide for participation by small utilities at an economically feasible unit cost per call;
- h) The System shall provide for "notice areas" no larger than one section of land;
- i) The System shall provide:
 - 1) for the gathering of information from excavators as to:

- A) the location and description of the excavation;
 - B) the date and time the excavation is to begin;
 - C) the name of person or company doing the excavation; and
 - D) the name and phone number of persons to be contacted about the excavation;
- 2) for distribution of the information to utilities with underground facilities in the area of the excavation;
- j) The System shall provide an informational system to indicate to excavators that no underground facilities exist in the area of excavation, if marking of the location of underground utilities does not exist on the site at the expiration of the notice period;
 - k) The System shall require that information needed to operate the system *within each utility's domain be identified and provided by the utilities to the notice system operator*;
 - l) The System shall provide for the financing and sharing of cost of construction, operation and maintenance of the system among the utilities;
 - m) The System shall provide for the resolution of liability problems resulting from operation of the system.

SUBPART B: REPORTING OF VIOLATIONS INVOLVING THE ACT

Section 265.100 Reporting of Suspected Violations

- a) Any person may report to the Commission a suspected violation of the Act. A report may be made whether or not the suspected violation resulted in any personal injury or property damage.
- b) Except for suspected violations that occur within the boundaries of a municipality of at least one million persons that operated its own underground facility notice system, facilities operators shall report suspected violations of the Act in the following circumstances:
 - 1) An underground natural gas utility facilities operator shall report suspected violations when any gas main is damaged causing a gas leak;
 - 2) An underground telecommunications utility facilities operator shall report suspected violations if the damage causes an outage to the

provider of an emergency telephone system (i.e., a 9-1-1 system) outage;

- 3) An underground utility facilities operator shall report a suspected violation if the occurrence results in a fatality or in personal injuries requiring hospitalization.
- c) Except for allegations of a violation of Section 11(h) of the Act [220 ILCS 50/11(h)], the Commission Staff will not investigate, and the Commission will not formally proceed with respect to, any alleged violation of Section 11 involving an excavation within the boundaries of a municipality of at least one million persons that operates its own underground facility notice system.
- d) Reports made pursuant to this Section may be submitted in writing, by telephone, electronically by e-mail, or in person. Reports shall be submitted within 45 30 days after the discovery of the violation. The Commission shall make available forms necessary for this purpose. Where reports made pursuant to this Section are submitted by telephone, the party receiving the telephonic information shall record the information on the above-mentioned forms provided by the Commission, and shall verify the information with the party submitting the telephone report.

SUBPART C: REVIEW OF REPORTED VIOLATIONS

Section 265.200 Initial Consideration by Staff

- a) Upon the receipt of a report of a suspected violation, the Staff of the Commission shall consider the matter and determine whether a violation has occurred. Staff's consideration may include, among other things, one or more of the following:
 - 1) Verification of records,
 - 2) Informal meetings,
 - 3) Teleconferences,
 - 4) Photo-documentation; and
 - 5) Comments or correspondence obtained from the parties involved.
- b) If Staff determines that a violation has occurred, Staff shall also consider the appropriate amount, if any, of a penalty to assess. In determining the amount of the penalty, Staff shall consider the alleged violator's:

- 1) Gravity of noncompliance with the law;
- 2) Culpability;
- 3) History of noncompliance;
- 4) Ability to pay the penalty;
- 5) Good faith in attempting to comply with the law;
- 6) Ability to continue in business; and
- 7) Any other special circumstances relevant to the matter. [220 ILCS 50/11(j)]

c) the Commission shall develop standards for applying these criteria, in the form of a penalty matrix, said penalty matrix to be implemented in accordance with Article 5 of the Illinois Administrative Procedures Act [5 ILCS 100 et seq]

ed) Any penalties assessed shall not exceed the maximum penalties provided by Section 11 of the Act [220 ILCS 50/11].

Section 265.210 Issuance of Notice of Violation

If Staff determines that a violation has occurred, Staff shall issue to the alleged violator either a notice of violation or a warning letter. Copies of these documents shall also be provided to the person who reported the suspected violation and, if different, to the owner of the facilities involved. The gravity and circumstances of the violation and the alleged violator's history of compliance or noncompliance shall guide Staff's decision whether to issue a notice of violation or a warning letter. If Staff determines that a violation has not occurred, Staff shall so inform, in writing, the alleged violator, the reporting party, and, if different, the owner of the facilities involved.

Section 265.220 Contents of Notice of Violation

A notice of violation shall set forth the date, time, and location of the violation, briefly describe the circumstances surrounding the violation, cite the provision or provisions of the Illinois Underground Utility Facilities Damage Prevention Act allegedly violated, and specify the amount of the penalty being assessed. The notice shall also advise the alleged violator of his or her options in resolving or contesting the matter.

Section 265.230 Alleged Violator's Options After Receiving Notice of Violation

The alleged violator shall, within 30 days after the date of the mailing of the notice of violation, either pay the amount of the penalty specified in the notice or request that the

matter be considered by the Advisory Committee. Timely payment of the proposed penalty shall constitute a final, nonreviewable resolution of the ~~matter~~, notice of violation issued under these Rules, and all activity with respect to the penalty assessed as a result of such notice of violation shall then terminate. If the alleged violator either fails to pay the proposed penalty within the time allotted or requests that the case be considered by the Advisory Committee, the matter shall then be referred to the Advisory Committee for its consideration.

SUBPART D: ADVISORY COMMITTEE

Section 265.300 Advisory Committee: Formation and Duties

- a) The Commission shall appoint an Advisory Committee as directed in Section 11(lj) of the Act [220 ILCS 50/11(lj)]. The Advisory Committee shall meet from time to time as necessary, ~~either in person or by telephone,~~ in person, to consider contested penalties, using a de novo standard of review. An accused violator, and the Commission Staff, shall have the opportunity to present their respective case before the Advisory Committee. The Advisory Committee shall take and maintain written minutes of each of its meetings. In evaluating the merits of a case, the Advisory Committee shall consider the report of the suspected violation, the results of Staff's consideration of the matter, correspondence from the parties, and any other pertinent information. The Advisory Committee shall adopt bylaws regarding its procedures, said bylaws to be implemented in accordance with Article 5 of the Illinois Administrative Procedures Act [5 ILCS 100 et seq].
- b) A decision shall be rendered by the Advisory Committee within 90 days after the date on which the alleged violator requests that the case be considered by the Advisory Committee or the case is referred by Staff to the Advisory Committee, as described in Section 265.230.
- cb) If the Advisory Committee concludes that a violation has not occurred, it shall direct Staff to so inform the alleged violator, the reporting party, and, if different, the owner of the facilities involved.
- d) If the Advisory Committee concludes that a violation has occurred, the Advisory Committee shall also determine the appropriate amount, if any, to assess as a penalty. In determining the amount of the penalty, the Advisory Committee shall consider the alleged violator's gravity of noncompliance with the law, culpability, history of noncompliance, ability to pay the penalty, good faith in attempting to comply with the law, and ability to continue in business, together with any other special circumstances relevant to the matter. If the Advisory Committee concludes that a penalty should be assessed for the violation, the Committee shall direct Staff to issue a letter so informing the alleged violator. If the Advisory Committee concludes that no penalty should be assessed for the violation, the Committee shall direct Staff to issue a warning letter to the alleged violator on the Committee's behalf.

Section 265.310 Alleged Violator's Options After Advisory Committee's Decision

If the Advisory Committee decides that a penalty should be assessed, the alleged violator may pay the amount of that penalty within 30 days after of the date of the mailing of the letter informing the alleged violator of the Advisory Committee's decision. Such payment shall constitute a final, nonreviewable resolution of the matter, and all activity with respect to the violation shall then terminate. If, within 30 days after of the date of the mailing of the letter informing the offender of the Advisory Committee's decision, the offender either refuses to pay or fails to pay the amount of the penalty assessed by the Advisory Committee, Staff shall then prepare and submit to the Commission an order initiating a proceeding to determine whether a violation has occurred and a penalty should be assessed.

SUBPART E: SUBSEQUENT PROCEEDINGS

Section 265.400 Formal Adjudicatory Proceedings

After the Commission issues an order initiating the proceeding, the matter shall be assigned to an Administrative Law Judge for de novo consideration. Such proceedings shall be conducted in conformity with Article X of the Public Utilities Act and 83 Ill. Adm. Code 200, and with the provisions of this Subpart.

Section 265.410 Scheduling and Time Limits

- a) Any answer or responsive pleading to the order initiating the case shall be filed with the Commission within 7 days after the respondent receives notice of the order.
- b) Reasonable discovery specific to the issues of the matter may commence upon the initiation of the case. Requests for discovery must be served in hand, and responses to discovery must be received by the requesting party within 14 days after the request is made, unless otherwise specified by the Administrative Law Judge.
- c) A pre-hearing conference shall be held within 14 days after the date on which the case is initiated.
- d) Hearings shall begin within 60 days after the date on which the case is initiated. Staff, the respondent, and any intervening parties shall be entitled to present evidence and argument in oral or written form as deemed appropriate by the Administrative Law Judge. The Commission shall issue a written decision resolving the case within 180 days after the date on which the case is initiated.